IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 86 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JETHABHAI AMARABHAI CHAMAR

Versus

STATE OF GUJARAT

Appearance:

MR AMIT J SHAH for revision Petitioner
MY BY MANKAD A.P.P. for revision opponent No. 1-State.

Revision opponents no.2 and 4 though duly served absent.

The name of the revision opponent No. 3 has been deleted as per the order of this Court dated 27-2-1996
(Coram : D.G. Karia, J.)

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 14/12/2000

ORAL JUDGEMENT

The original complainant of Criminal Case No. 831 of 1984 which was pending on the file of the learned Magistrate, Vijapur (hereinafter referred to as the learned Magistrate for the sake of brevity) has by filing this Criminal Revision Application u/s 397 of the Criminal Procedure Code, 1973 (for short "Cr. P.C.") challenged correctness, legality and propriety of the judgment exh. 6 dated 28-2-1992 rendered by the learned Sessions Judge, Mahesana in Criminal Appeal No. 10/ 92.

2. The revision petitioner was the complainant. Whereas the revision opponents no. 1 and 2 were the accused in the aforesaid Criminal Case No.. 831/84. Revision opponent No. 4 Hasmukhbhai Shantilal Soni was a witness in the aforesaid criminal case. He had produced the muddamal articles before the police and that muddamal articles were seized by the police under the panchanama. Hence, the parties will be referred to hereinafter as the complainant, respective accused and the witness respectively at the appropriate places.

3. The facts giving rise to this Criminal Revision Application in a nutshell, are as follows :

On or about or about 10-12-1983 at about 23-00 hours the theft of certain golden and silver ornaments and other articles was committed from the room of the complainant situated on the outskirts of village Vasai. The complainant lodged the complaint in Vasai Police Station. The police investigation was conducted and ultimately the charge sheet was filed against the two accused who are the revision opponents No. 2 and 3 in this present Criminal Revision Application. Said two accused were tried by the learned Magistrate for the offence punishable u/s 380-114 of the I.P. Code. At the end of the trial, the accused were acquitted u/s 248 (1) of the Cr. P.C. by the Magistrate by rendering his judgment exh. 29 dated 1-11-1985. By that judgment the learned Magistrate also directed the muddamal articles to be handed over to the complainant.

4. Being aggrieved against and dissatisfied with the the order with regard to the muddamal articles, passed by the learned Magistrate the revision opponent no. 4 of

this Criminal Revision Application who was the witness in the original criminal case, has filed Criminal Appeal u/s 454 of the Cr. P. C. before the Sessions Court, Mahesana. The learned Sessions Judge after hearing the learned advocates for the parties rendered his judgment exh. 6 on 28-2-1992 and by allowing that appeal he set aside the order of the learned Magistrate with regard to the muddamal articles to be handed over to the complainant.

The learned Sessions Judge by his said judgment also directed the muddamal articles to be entrusted to the witness Hasmukhbhai Shantilal Shah i.e. the appellant of that Criminal Appeal No. 10/92. Being aggrieved against and dissatisfied with the said order dated 28-2-1992 of the learned Sessions Judge, Mahesana, the original complainant has filed this present Criminal Revision Application.

5. Having heard the learned advocates of both the parties and on going through the judgments of the lower court as well as the appellate court and also on going through the grounds stated in the memo of this Criminal Revision Application, this Court is of the view that the learned Magistrate ought to have held an inquiry with regard to the muddamal articles u/s 452 (1) of the Cr. P C. and both the parties including the witness from whose custody the muddamal articles were seized should have been given full opportunity to lead evidence with regard to their claims for the muddamal articles. In view of this, the order of the learned Magistrate, Vijapur as well as the order of the learned Sessions Judge, Mahesana are required to be set aside with certain directions to be given to the learned Magistrate.

6. In view of this, this Criminal Revision Application is allowed and the order dated 1-11-1985 of the learned Magistrate, Vijapur passed in Criminal Case No. 831/1984 so far as it relates to the muddamal articles only and the judgment of the Appellate Court dated 28-2-1992 rendered in Criminal Appeal No.10/92 are set aside.

7. The learned Magistrate is directed to hold an inquiry u/s 452 (1) of the Cr. P. C. for the muddamal articles. For this inquiry, full opportunity of being heard be given to both the parties including the witness from whose custody the muddamal articles were seized. This inquiry shall be held by the learned Magistrate, Vijapur and decision be given strictly on merits in accordance with law without being influenced by the order

of this Court and he shall complete such inquiry within three months from the date of receipt of a writ of this court.

8. In view of abvoe, this Criminal Revision Application stands disposed of with the aforesaid directions. Rule is made absolute. Interim relief granted on 31-3-1992 shall remain effective and operative till the inquiry pursuant to this order of this Court is finally concluded by the learned Magistrate.

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/JVSatwara/